

Background Information on the National Priorities List (NPL)

BACKGROUND

- CERCLA Section 105(a)(8)(B) establishes the National Priorities List (NPL).
- “..the President shall list as part of the plan national priorities among the known releases or threatened releases throughout the United States and shall revise the list no less often than annually.”
- The NPL is EPA’s list of sites that warrant further investigation under CERCLA and, if necessary, need remedial action.
- Only NPL sites may receive Superfund dollars for remedial activities.
- As of May 2002, there are 1,221 final sites and 74 proposed sites. In addition, 258 sites have been deleted from the NPL.
- In recent years, approximately 40 sites per year have been added to the NPL.

PLACING SITES ON THE NPL

- As a matter of policy, EPA updates the NPL quarterly. Each NPL Update is published in the *Federal Register* and the list of sites is codified in 40 CFR Part 300 Appendix B.
- There are 3 mechanisms for placing sites on the NPL:
 - Sites can be placed on NPL if the Hazard Ranking System (HRS) score is 28.5 or greater.
 - Each State may designate a single site as its top priority.
 - Certain other sites may be listed if the Agency for Toxic Substances and Disease Registry (ATSDR) issues a health advisory recommending dissociation and EPA determines cost-effectiveness factors.
- The majority (greater than 90%) of sites are placed on the NPL using the HRS.

HAZARD RANKING SYSTEM (HRS)

- The HRS is a mathematical scoring system that serves as a screening tool to evaluate the relative threat posed by a site and determine whether the site should be included on the NPL.
- The HRS is not a risk assessment.
- The HRS evaluates four pathways: ground water, surface water, soil exposure, and air.
- A site score is calculated through the mathematical algorithms prescribed in the HRS. This score does not represent a specified level of risk but serves as a screening-level indicator.
- Sites that score 28.5 or greater are eligible for listing on the NPL.

NPL LISTING PROCESS

- A site is first proposed to the NPL in a proposed rule published in the *Federal Register*.
- The public then has 60 days in which to comment on EPA's evaluation and basis for placing the site on the NPL.
- EPA considers all technical comments received during the comment period and determines whether to finalize the site on the NPL.
- If it is determined that a site shall be finalized on the NPL, EPA publishes a final rule in the *Federal Register* and concurrently provides a support document that addresses the comments received for the site.

GOVERNOR/STATE CONCURRENCE POLICY

- In April 1995, Congress placed a provision in EPA's appropriations bill that required the Governor's concurrence when placing a site onto the NPL.
- Although no longer required by appropriations language, as a matter of policy, EPA continues to request State support on the listing of sites onto the NPL.
- Since 1995, EPA has proposed 203 sites to the NPL. EPA received State concurrence for all NPL listings except for one site which was proposed with State opposition. (The Fox River site in Wisconsin was proposed to the NPL in July 1998 and has not been finalized.)
- EPA has received State concurrence on the 202 proposed sites from 40 different States, the District of Columbia, Puerto Rico, and the Virgin Islands.
- If a State opposes the listing of a particular site, EPA has an issue resolution process that elevates the decision to the Assistant Administrator for the Office of Solid Waste and Emergency Response.

EPA POLICIES THAT AFFECT NPL LISTING

- **EPA Removal Program:** EPA has achieved cleanup of many NPL-eligible sites using removal authority and funding. In many cases, PRPs have been willing to act under direction of the removal program. A February 14, 2000 OSWER memo titled "Use of Non-Time-Critical Removal Authority in Superfund Response Actions" establishes procedures for selecting these removal actions at such sites.____
- **Nuclear Regulatory Commission (NRC) Deferral policy (12/82):** Defers listing of releases of source, by-product, or special nuclear material from any NRC-licensed facility since NRC has full authority to require cleanup of releases from such facilities. Deferral does not include releases from State-licensed facilities.
- **Resource Conservation and Recovery Act (RCRA) Deferral policy (11/89):** Defers listing of RCRA Treatment, storage, and disposal facilities (with certain defined exceptions) that can be addressed under RCRA subtitle C corrective action authorities.
- **State Deferral policy (05/95):** Establishes formal agreements between EPA and State/Tribe in which EPA defers consideration of NPL listing at sites while State/Tribe compels and oversees PRP-lead response actions. Response actions should be substantially similar to a response required under CERCLA. EPA claims no further interest at these sites after cleanup is successfully completed.
- **Voluntary Cleanup Program (11/96):** Establishes Memorandum of Agreements (MOAs) with States to provide comfort for sites that are cleaned up under State programs e.g. EPA assumes that State activities are sufficient and generally EPA does not anticipate taking

removal or remedial action at sites in the State program.
In total, EPA has signed VCP MOAs with 19 States.

EPA POLICIES THAT AFFECT NPL LISTING (CONT.)

- NPL-equivalent policy (under development): Provides a framework for EPA and PRPs to negotiate cleanup agreements at non-NPL sites. Note that EPA's enforcement authorities for remedial actions under CERCLA are not limited to NPL sites. EPA Regions have been conducting such negotiations since 1980s. Recently, the level of activity has increased, with over 200 sites subjectively identified as NPL equivalent (NPLeq). About 80 sites have enforcement agreements in place and 19 proposed NPL sites are currently considered NPL equivalent.
- Brownfields legislation (01/02): Subtitle A of Public Law 107-118 allows EPA to provide grant funding for site characterizations and remediation work at an NPL-eligible site if the site passes the "eligible response site" exclusions criteria. Subtitle C requires EPA to defer final listing of an "eligible response site" in lieu of a State/Tribal program cleanup (with caveats).

NPL POLICY REVIEW

- NPL policy is a core element of the charge to NACEPT.
- EPA has formed an “Role of the NPL Workgroup” that consists of representatives from various EPA offices at Headquarters, EPA Regions, States and Tribes.
 - The purpose of the Workgroup is to discuss near-term strategy for NPL listing policy prior to receiving recommendations from NACEPT.
 - The Workgroup is also available to support NACEPT by providing information to any NACEPT requests, responding to questions and providing expert analysis.

IMPORTANCE OF THE NPL

- EPA typically lists sites with no PRPs, recalcitrant PRPs, or large areas of contamination beyond a State's cleanup ability.
- The ability to list new sites on the NPL is essential to successful implementation of the Superfund program.
- The NPL provides leverage to EPA and States to secure PRP commitments for non-NPL cleanups.
- Approximately 70% of the NPL sites are PRP-lead cleanups, and involve on average only a fraction of the EPA resources spent at Fund lead sites; NPL listing is essential to securing PRP commitment to conduct response.
- EPA rarely initiates NPL listing independently. More commonly, EPA responds to requests from States/Tribes or requests from communities when non-NPL response options have not proved viable.

SUMMARY

- The NPL remains a critical tool in the cleanup of toxic waste sites.
- However, it is being used more selectively to focus on eligible sites where other cleanup approaches aren't viable.
- When other approaches are able to provide cleanup, EPA allows time for these alternatives to effectively address site risks.
- However, when other options are unavailable or ineffective, NPL listing ensures a comprehensive response to protect human health